87-919 (1) No. 87-

Supreme Court, U.S.
FILED
DEC 1 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

THE TIMES MIRROR COMPANY,
TRIBUNE NEWSPAPERS WEST, INC.,
and LOZANO ENTERPRISES,

Appellants,

v.

THE CITY OF LOS ANGELES,

Appellee.

On Appeal from the California Court of Appeal, Second Appellate District, Division Two

---

JURISDICTIONAL STATEMENT

Of Counsel:
ROBERT S. WARREN
WILLIAM C. FOUTZ
KELLI L. SAGER
GIBSON, DUNN & CRUTCHER

WILLIAM A. NIESE
JEFFREY S. KLEIN
THE TIMES MIRROR COMPANY
220 West First Street
Los Angeles, CA 90012
(213) 237-5000

FRED L. LEYDORF
HUFSTEDLER, MILLER, CARLSON
& BEARDSLEY
355 South Grand Avenue
Los Angeles, CA 90071
(213) 617-7070

REX S. HEINKE
GIBSON, DUNN & CRUTCHER
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7551

Attorney for Appellants and Counsel of Record

Of Counsel:

FRANK SIMPSON III
KATHYLEEN A. O'BRIEN
SHEPPARD, MULLIN, RICHTER
& HAMPTON
333 South Hope Street
Los Angeles, CA 90071
(213) 620-1780

QUESTIONS PRESENTED

1. Whether a municipal ordinance which, without any justification, imposes widely disparate tax burdens on various types of media, violates the First and Fourteenth Amendments?

2. Whether a municipal ordinance which imposes different tax burdens on various types of media, thereby enhancing the relative voices of some members of the media at the expense of others, violates the First and Fourteenth Amendments?

3. Whether a municipal ordinance which grants standardless discretion to a government official to apportion tax burdens on the media violates the First and Fourteenth Amendments?*

---

* All parties to this case are named in the caption. Appellant The Times Mirror Company has an interest in the following subsidiaries and affiliates: Los Angeles Times-Washington Post News Service Inc., Sumerfit Newsprint Corp., Graphic Controls Corp., and Tejon Ranch Company. Appellant Times Mirror has no other parent company, subsidiary (except wholly-owned subsidiaries), or affiliate within the meaning of Rule 28.1 of the Rules of this Court.

Appellant Tribune Newspapers West, Inc. is a wholly-owned subsidiary of the Tribune Company, which publishes, among other newspapers, the Chicago Tribune. Appellant Tribune Newspapers West, Inc. has no other parent company, subsidiary, or affiliate within the meaning of Rule 28.1 of the Rules of this Court.

Appellant Lozano Enterprises has no other parent company, subsidiary, or affiliate within the meaning of Rule 28.1 of the Rules of this Court.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	3
JURISDICTION	4
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	6
A. *Appellate Jurisdiction*	10
B. *The Questions Presented Are Substantial and Important*	10
C. *Because the Questions Presented Have Generated Substantial Conflicts Among the State and Federal Courts, They Require Resolution by This Court*	16
CONCLUSION	20

TABLE OF AUTHORITIES

CASES:	Page
In Re Advisory Opinion to Governor, 509 So. 2d 292 (Fla. 1987)	18
Arkansas Writers' Project, Inc. v. Ragland, No. 85-1370 (Apr. 22, 1987), 107 S. Ct. 1722 (1987)	*passim*
Big Mama Rag v. United States, 631 F.2d 1030 (D.C. Cir. 1980)	19
Buckley v. Valeo, 424 U.S. 1 (1976)	2,9,14
Chicago Tribune Co. v. Johnson, 106 Ill. 2d 63, 477 N.E.2d 482, *appeal dismissed for want of a substantial federal question*, 474 U.S. 915 (1985)	13-14
City of Alameda v. Premier Communications Network, Inc., 156 Cal. App. 3d 148, 202 Cal. Rptr. 684, *cert. denied*, 469 U.S. 1073 (1984)	18
Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975)	4
Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975)	10
Festival Enterprises, Inc. v. Pleasant Hill, 182 Cal. App. 3d 960, 227 Cal. Rptr. 601 (1986)	18
First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978)	15
Hague v. Committee for Industrial Organization, 307 U.S 496 (1939)	2,15
Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952)	6
Lathrop v. Donahue, 367 U.S. 820 (1961)	10
Louisiana Life, Ltd. v. McNamara, 504 So. 2d 900 (La. Ct. App. 1987)	17
Massachusetts v. United States, 435 U.S 444 (1977)	16

Table of Authorities Continued

	Page
Matter of the Assessment of Additional North Carolina and Orange County Use Taxes Against Village Publishing Co., 313 N.C. 211, 322 S.E.2d 155 (1984), *appeal dismissed for want of a substantial federal question*, 472 U.S. 1009 (1985)	13
McCulloch v. Maryland, 4 Wheat 316 (1819)	16
Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue, 460 U.S. 575 (1983)	*passim*
Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981)	6
Shuttlesworth v. Birmingham, 394 U.S. 147 (1969)	16
Speiser v. Randall, 357 U.S 513 (1957)	16
Thomson Newspapers v. Florence, 287 S.C. 305, 338 S.E.2d 324 (1985)	17
United States v. Paramount Pictures, 334 U.S. 131 (1948)	6-7
FEDERAL CONSTITUTION AND STATUTES:	
First Amendment	*passim*
28 U.S.C. § 1257 (2)	4,10
28 U.S.C. § 1257(3)	10
28 U.S.C. § 1341	18
28 U.S.C. § 2103	10
STATE STATUTES:	
Los Angeles Municipal Code	
§ 21.15(h)	5,9
§ 21.109	4,7
§ 21.147	5,7
§ 21.166	5,7

Table of Authorities Continued

	Page
§ 21.167	5,7
§ 21.189.2	5,7
§ 21.190	5,6,7
§ 21.192	5,7
§ 21.197	5,7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

THE TIMES MIRROR COMPANY,
TRIBUNE NEWSPAPERS WEST, INC.,
and LOZANO ENTERPRISES,

Appellants,

v.

THE CITY OF LOS ANGELES,

Appellee.

On Appeal from the California Court of Appeal, Second Appellate District, Division Two

---

JURISDICTIONAL STATEMENT

The Times Mirror Company, Tribune Newspapers West, Inc., and Lozano Enterprises ("appellants") appeal from the decision of the California Court of Appeal, Second Appellate District, Division Two, which held that certain provisions of the Los Angeles Municipal Code which impose different taxes on different members of the media and which grants standardless discretion to a city official to apportion tax burdens on the media do not violate the First and Fourteenth Amendments.

Each of the three questions presented merits review by this Court because they constitute the next

logical steps in resolving the issues that flow from this Court's decisions in *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575 (1983), and *Arkansas Writers' Project, Inc. v. Ragland*, No. 85-1370 (Apr. 22, 1987), 107 S. Ct. 1722 (1987).

First, the constitutionality of imposing widely disparate taxes on different media was expressly left open by this Court in *Arkansas Writers' Project, Inc. v. Ragland*, slip op., at 11, 107 S. Ct., at 1729. Without the benefit of clear guidance from this Court, courts facing this issue have reached inconsistent and irreconcilable results. *See* part C, *infra*. Therefore, there is a pressing need for the Court to resolve this issue.

Second, in *Buckley v. Valeo*, 424 U.S. 1 (1975), this Court held that a statute, which limited spending in political campaigns, enhanced the relative voices of some speakers at the expense of others in violation of the First and Fourteenth Amendments. 424 U.S., at 48-49. However, this Court has expressly left open the question of whether differential taxation of the media is unconstitutional under *Buckley*. *Minneapolis Star*, 460 U.S., at 593 n.17. The Court should now decide this issue and thereby resolve the conflicts that have and will continue to develop in the lower courts on the constitutionality of differential taxation of the media. *See* part C, *infra*.

Third, the delegation of standardless discretion to a city official, where First Amendment interests are deeply implicated, has previously been held to be unconstitutional by this Court in the context of a state's regulatory authority. *See, e.g., Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1938).

However, this Court has not yet decided the constitutionality of such standardless discretion in the context of a state's taxing power. Once again, the lack of a clear rule of law on this issue has resulted in inconsistent and conflicting decisions by state and federal courts that require this Court's intervention.

The resolution of these issues is not only of substantial interest to the parties because of the large sums at stake,[1] but is also of substantial interest to all media and taxing authorities in this country because the City of Los Angeles is one of the largest municipalities in America, whose success or failure in this case will set a national pattern for what is permissible in taxing the media.

OPINIONS BELOW

The May 28, 1987 opinion of the Second District Court of Appeal is reproduced in App. A, *infra*, 1a-25a, and is reported at 192 Cal. App. 3d 170, 237 Cal. Rptr. 346 (1987). The September 3, 1987 order of the California Supreme Court denying appellants' Petition for Review is reproduced in App. B, *infra*, 26a, and is unreported. The October 2, 1987 judgment of the Court of Appeal, known as a remittitur, is reproduced in App. C, *infra*, 27a.

---

[1] Currently, more than four million dollars is at issue in this case, and that figure increases at the rate of more than one million dollars a year. In addition, numerous lawsuits by other media entities are pending against the City of Los Angeles which raise the same issues as this case. Those lawsuits are awaiting the outcome of this case.

JURISDICTION

Appellants contended below that certain provisions of the Los Angeles Municipal Code violate the First and Fourteenth Amendments to the United States Constitution. Both the trial court and the Court of Appeal held that the challenged provisions were constitutional, and judgment was entered in favor of appellee, the City of Los Angeles. App. A, *infra*, 25a. The California Supreme Court subsequently denied appellants' Petition For Review. App. B, *infra*, 26a.

A Notice of Appeal of this case to this Court was filed in the Court below on November 18, 1987. App. D, *infra*, 28a-30a. This appeal is being docketed in this Court within 90 days from the California Supreme Court's denial, on September 3, 1987, of appellants' Petition For Review.

For reasons discussed more fully below, this Court has appellate jurisdiction over this case under 28 U.S.C. § 1257(2). *See, e.g., Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 476 (1975).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment of the Constitution provides, in pertinent part, that:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ."

2. Los Angeles Municipal Code, ch. II, § 21.109, is quite lengthy and is therefore set forth in full in App. E, *infra*, 33a-38a. This section contains the specific tax rates and methods of taxation applied to motion

picture producers. The tax is based upon production costs, rather than gross receipts, and increases in steps from $125.00 per year (for production costs of $50,000.00) to a maximum of $10,750.00 (for production costs of $4.2 million or more).

3. Los Angeles Municipal Code, ch. II, § 21.166, is quite lengthy and is therefore set forth in full in App. E, *infra*, 39a-40a. This section contains the specific tax rates and methods of taxation applied to wholesale newspaper sales. The tax is computed at the rate of $20.00 for the first $20,000.00 or less of gross receipts, plus $1.00 for each additional $1,000.00 of gross receipts or fraction thereof.

4. Los Angeles Municipal Code, ch. II, § 21.167, is quite lengthy and is therefore set forth in full in App. E, *infra*, 40a-42a. This section contains the specific tax rates and methods of taxation applied to retail newspaper sales. The tax is computed at the rate of $18.75 for the first $15,000.00 or less of gross receipts, plus $1.25 for each additional $1,000.00 of gross receipts or fraction thereof.

5. Los Angeles Municipal Code, ch. II, § 21.15(h), is quite lengthy and is therefore set forth in full in App. E, *infra*, 33a. This section empowers the City Clerk to promulgate whatever rules and regulations to apportion taxes "as are necessary or desirable."

6. Los Angeles Municipal Code, ch. II, § 21.147, 21.189.2, 21.190, 21.192, and 21.197 are quite lengthy and are therefore set forth in full in App. E, *infra*, 38-39a, 42a-49a. These sections contain the specific tax rates and methods of taxation applied to other First Amendment activities, *e.g.*, radio and television broadcasters, and billboard companies.

STATEMENT OF THE CASE

This case involves a constitutional challenge to certain provisions of the Los Angeles Municipal Code, which impose a business tax on various media, including appellants. Each of the appellants publishes a newspaper in the Los Angeles area.[2]

The City of Los Angeles has for some time imposed a tax on various businesses operating within the City. Prior to January 1, 1984, § 21.190(c)(7) and (8) of the Los Angeles Municipal Code expressly exempted the media's publishing and broadcasting receipts from the City business tax. Effective January 1, 1984, the City amended the Municipal Code to tax the activities of newspaper publishers, including appellants, and broadcasters of radio and television. As amended, the Code applies different tax rates and methods of taxation to different First Amendment activities.[3]

---

[2] The Times Mirror Company publishes a daily newspaper, the Los Angeles Times. Tribune Newspapers West, Inc., at the time this lawsuit was filed, published a daily newspaper, the Los Angeles Daily News. Lozano Enterprises publishes a daily newspaper, La Opinion.

[3] Throughout this brief, appellants will refer to newspapers, broadcasters, and other communicative or expressive activities as "First Amendment activities." Such activities are protected by the First and Fourteenth Amendments to the Constitution. *See, e.g., Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501-02 (1952) (motion pictures, like books, magazines, and newspapers, are included within free speech and free press guarantees, even though sold for profit); *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 65 (1981) ("Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works, fall within the First Amendment guarantee"); *United States v. Paramount Pictures*, 334 U.S. 131

By grafting these new provisions on to the already complex structure of the Municipal Code, Los Angeles now taxes different First Amendment activities at widely disparate rates. The following chart, based on the Los Angeles Municipal Code, demonstrates the wide disparities in taxes on various First Amendment activities:

SECTION	ACTIVITY	RATE
21.109	Motion Picture Producers	Multi-tiered rate structure with a maximum tax of $10,750
21.147	Theaters	$18.75/1st $15,000 $1.25/add'l. $1000
21.166	Newspaper, Magazine, and Book Publishers—Wholesale	$20.00/1st $20,000 1.00/add'l. $1,000
21.167	Newspaper, Magazine, and Book Publishers—Retail	$18.75/1st $15,000 $1.25/add'l. $1,000
21.189.2	Radio & T.V.	$18.75/1st $15,000 $1.25/add'l. $1,000
21.190	Billboard Companies	$30.00/1st $6,000 $5.00/add'l. $1,000
21.192	Movie Rentals	$30.00/1st $12,000 $2.50/add'l. $1,000
21.197	Telephone Company (Including Yellow Pages)	$20.00/1st $20,000 $1.00/add'l. $1,000

Furthermore, movie producers are taxed on production costs, rather than on their gross receipts. By the Los Angeles City Clerk's own estimate, produc-

---

(1948) (movies, newspapers, and radio are all protected by the First Amendment).

tion costs equal only one-half the amount of gross revenues. Thus, not only are movie producers taxed at a lower *rate* than other First Amendment activities, the *method* of taxation further reduces their taxes.

As a result of these disparate rates and methods of calculating taxes, businesses engaged in protected First Amendment activities are subject to vastly different tax burdens. Based on the above rates, the tax on one hundred million dollars in production costs for the motion picture industry would be *$10,750*; a billboard company with the same one hundred million dollars in gross receipts would owe the City *$500,000*; and a newspaper would owe a tax of *$125,000* on its retail receipts or *$100,000* on its wholesale receipts. For example, while appellant Times Mirror was required to pay over $800,000 in business taxes for 1985, motion picture producers in Los Angeles, no matter what their income, paid a maximum tax of no more than $10,750, or barely more than one percent of the tax imposed on Times Mirror.

Such differential taxation of First Amendment activities is impermissible absent a showing of a compelling justification for such disparate treatment. *Minneapolis Star*, 460 U.S., at 585. The City has never attempted to justify this differential taxation in any way nor has the City ever attempted to explain why a maximum tax of $10,750 on movie producers is necessary or appropriate.

In addition, the Los Angeles Municipal Code empowers the City Clerk to apportion the City's business taxes in any manner he sees fit. The Clerk is instructed to employ whatever method he thinks is "necessary and desirable" in apportioning tax bur-

dens. L.A.M.C. 21.15(h). Such unfettered and standardless discretion in applying taxes to First Amendment activities is also unconstitutional.

On August 27, 1984, appellants filed this suit on the grounds that the provisions of the Los Angeles Municipal Code, which impose differential taxes on different members of the media and which grant standardless discretion to the City Clerk to apportion those taxes, were unconstitutional under the First and Fourteenth Amendments to the United States Constitution. The trial court granted summary judgment in favor of appellee, City of Los Angeles, stating that the Municipal Code "passed constitutional muster." App. A, *infra*, 8a.

On appeal, the Second District Court of Appeal upheld the trial court's finding of constitutionality of the Los Angeles Municipal Code, stating that "[t]he municipal ordinance here does not possess the constitutional infirmities that were present in either *Minneapolis Star* or *Premier Communications*." App. A, *infra*,14a.[4] The Court of Appeal also rejected appellants' constitutional challenge to the City Clerk's standardless discretion: "Next we reject plaintiffs' contention that the ordinance is unconstitutional on its face because it grants the city clerk absolute discretion in apportioning the amount of gross receipt taxes to be collected from businesses engaged in protected First Amendment activities." App. A, *infra*, at 18a-19a.

---

[4] Appellants also expressly contended that the Los Angeles ordinance was unconstitutional under the rule set forth in *Buckley*, *supra*, but the Court of Appeal did not expressly address this issue.

A. Appellate Jurisdiction

Appellate jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1257(2). Under that statute for there to be jurisdiction in this Court, an appellant must have "drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution . . . ." In the courts below, appellants directly challenged the constitutionality of the same provisions of the Los Angeles Municipal Code that are at issue here and did so on the same constitutional grounds asserted here. As discussed above, the trial court and the Court of Appeal squarely decided that the challenged Municipal Code provisions were constitutional. App. A, *infra*, 8a, 14a, 18-19a.

The Municipal Code is clearly a "state statute" for purposes of § 1257(2). *See, e.g., Erznoznik v. City of Jacksonville*, 422 U.S. 205, 207 n.3 (1975); *Lathrop v. Donahue*, 367 U.S. 820, 824-25 (1961). This Court may, in any event, treat these papers as a petition for writ of certiorari under 28 U.S.C. § 2103 and exercise jurisdiction pursuant to 28 U.S.C. § 1257(3).

B. The Questions Presented Are Substantial and Important

Appellants do not contend that, by virtue of the protected status of their publishing activities under the First Amendment, they are totally immune from taxation. Rather, appellants have challenged the constitutionality of those provisions of the Los Angeles Municipal Code which impose widely disparate taxes on different media and which grant the City Clerk standardless discretion to apportion taxes on the media.

Neither the City of Los Angeles nor the Court of Appeal's decision seriously disputes that the Los Angeles Municipal Code favors some First Amendment activities over others by differential taxation, *e.g.*, by limiting movie producers' maximum tax to $10,750 while imposing no limit on the maximum tax on newspapers or any other First Amendment activity. Furthermore, there is nothing in the record below which provides any justification whatsoever, let alone a compelling one, for this differential treatment.

In response to appellants' argument that the City had not justified its disparate treatment of different media, the Court of Appeal simply asserted that there are "inherent differences" between movie producers and other media, and that appellants had not shown that movie producers "operate[] in a manner similar to" newspapers. App. A, *infra*, 17a. This position, if accepted, would eviscate this Court's decisions in *Minneapolis Star & Tribune Co.*, *supra*, and *Arkansas Writers' Project*, *supra*.

First, even assuming *arguendo*, that the City had shown that there are "inherent differences" between movie producers and other media which are constitutionally significant and which might therefore justify different tax treatment (which it did not), *the City has never attempted to show that the particular rates and methods of taxation applied to movie producers are justified by the "inherent differences" between movies and other media*. Specifically, the City has not and cannot show that any such "differences" justify a cap on the tax paid by movie producers of $10,750.00, while there is no limit to the tax paid by newspapers, so that, for example, Times Mirror pays

some $800,000 a year in taxes, which is some seventy-five times as much as any movie producer.

Second, the unsupported and unexplained assertion that movie producers and newspapers are "different" is constitutionally inadequate to justify disparate tax treatment. This Court has held that differential taxation of the media is unconstitutional absent a *compelling* justification. Thus, in *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, this Court invalidated a Minnesota state tax on the cost of paper and ink products consumed in the production of publications which exempted the first $100,000 worth of ink and paper consumed. This Court found no evidence that the Minnesota Legislature adopted the tax for any impermissible motive or to censor the media, 460 U.S., at 580; nonetheless, this Court invalidated the tax on the ground that its structure alone, which singled out the press for disparate treatment without any justification for such differential taxation, was unconstitutional. As this Court recognized in *Minneapolis Star*, if differential taxation is permitted, "the threat of burdensome taxes becomes acute" and "[t]hat threat can operate as effectively as a censor to check critical comment by the press, undercutting the basic assumption of our political system that the press will often serve as an important restraint on government." *Id.*, at 585.

That concern is equally applicable here. Instead of singling out a limited group of newspapers to receive the brunt of the tax, as was true in *Minneapolis Star*, the Los Angeles Municipal Code taxes various types of First Amendment activities at many different levels and gives overwhelmingly favorable treatment to a small group—movie producers. As in *Minneapolis*

Star, this allows the government to use taxes as a threat that critical commentary will lead to burdensome taxes. This is constitutionally impermissible. *Arkansas Writers' Project, Inc. v. Ragland*, slip op., at 6, 107 S. Ct., at 1727 ("selective taxation of the press—either singling out the press as a whole or targeting individual members of the press—poses a particular danger of abuse by the State.").

Third, the Court of Appeal improperly placed the burden of proof on appellants to show that there is no justification for the City's differential treatment of the media. Under this Court's decision in *Minneapolis Star*, once it has been established that the media is being differentially taxed, the City has the burden of justifying the disparate treatment. *Minneapolis Star*, 460 U.S., at 585. The City never even attempted to meet this burden.

It is not appellants' position that differential taxation of different media can never be justified, but rather that a compelling justification for differential treatment must be shown. As this Court has recognized, state tax laws which differentially tax different media are permissible, but only where the government has adequately justified the disparate treatment. *See, e.g., Matter of the Assessment of Additional North Carolina and Orange County Use Taxes Against Village Publishing Co.*, 313 N.C. 211, 322 S.E.2d 155 (1984), *appeal dismissed for want of a substantial federal question*, 472 U.S. 1000 (1985);[5] *Chicago Tribune Co. v. Johnson*, 106 Ill. 2d 63, 477 N.E.2d 482, *appeal dismissed for want of a substantial federal question*,

[5] Justices Brennan and White dissented from this dismissal. 472 U.S. 1001, 1003 (1985).

474 U.S. 915 (1985). This Court has never upheld a differential tax scheme where the government failed to provide any justification whatsoever for disparate treatment of the media. Yet, that is precisely what the Court of Appeal did here.

That these federal constitutional questions are substantial and important is made clear by this Court's recent decision in *Ragland*. There, the Court struck down an Arkansas statute which exempted all newspapers and certain special interest magazines from a sales tax, but which applied the tax to general interest magazines. The Court held that the Arkansas tax statute was unconstitutional because it differentiated between magazines based upon their content; the Court expressly left open the issue of whether the differential taxation of newspapers and magazines was also unconstitutional. Slip op., at 11, 107 S. Ct., at 1729. This Court's identification of that unresolved issue, which is at the heart of appellants' case here, demonstrates the substantiality of the constitutional questions presented in this appeal.

A second substantial issue presented by this appeal is whether differential taxation of various types of media is unconstitutional because it permits the government to enhance the relative voice of some members of the media at the expense of others. In *Buckley v. Valeo*, 424 U.S. 1 (1976), this Court struck down a portion of the Federal Election Campaign Act, which limited expenditures in political campaigns to "equaliz[e]" the ability of individuals and groups to influence elections, holding that a statutory scheme which favors one form of expression over another is unconstitutional:

> *. . . the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment,* which was designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources' ", and " 'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' "

424 U.S., at 48-49 (citations omitted; emphasis added). This Court later applied this same rationale to invalidate a law which prohibited corporations, but not others, from making contributions to referenda campaigns. *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

In *Minneapolis Star*, the application of *Buckley* to differential taxation of various types of media was raised. However, since the statute at issue was declared unconstitutional on other grounds, this Court expressly left open the question of *Buckley's* application to differential taxation. 424 U.S., at 593 n.17. This issue should now be resolved by this Court, so that the application of this important constitutional principle is clear.

A third substantial issue presented by this appeal is the constitutionality of the standardless discretion granted to the City Clerk to apportion the imposition of taxes. A long line of decisions by this Court has squarely held that the delegation of standardless discretion violates the First Amendment. *See, e.g., Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939) (striking down city licensing ordinance which empowered city official to refuse the permit if,

in his opinion, the refusal would prevent "riots, disturbances, or disorderly assemblage"); *Shuttlesworth v. Birmingham*, 394 U.S. 147, 149-50 (1969) (holding unconstitutional an ordinance that stated that a permit shall be granted unless, in the judgment of the city commission, "[t]he public welfare, peace, safety, health, decency, good order, morals or convenience required that it be refused").

The Court of Appeal's decision dismissed these cases as inapplicable because they purportedly deal with "regulatory" authority under the police power as opposed to "taxing authority," implying that the latter is somehow less subject to constitutional limitations. App. A, *infra*, 22a. Such a distinction is utterly untenable. *See, e.g., McCulloch v. Maryland*, 4 Wheat 316, 431 (1819) ("the power to tax involves the power to destroy"); *Massachusetts v. United States*, 435 U.S. 444, 455-56 (1977) ("[*A*] *tax is a powerful regulatory device*; a legislature can discourage or eliminate a particular activity that is within its regulatory jurisdiction simply by imposing a heavy tax on its exercise") (emphasis added); *Speiser v. Randall*, 357 U.S. 513, 518 (1957) ("It is settled that speech can be effectively limited by the exercise of the taxing power"). However, this conflict cannot be resolved without an authoritative decision by this Court.

C. Because the Questions Presented Have Generated Substantial Conflicts Among the State and Federal Courts, They Require Resolution by This Court

The Court of Appeal's decision in this case compounds a conflict among the courts that have considered these issues, because it is squarely contrary to controlling authority in other jurisdictions, both on the federal and state level.

First, the Court of Appeal's decision here is squarely contrary to controlling authority in other states. In *Louisiana Life, Ltd. v. McNamara*, 504 So. 2d 900 (La. Ct. App. 1987), the Louisiana court invalidated on federal constitutional grounds a state sales tax which applied to magazines but exempted newspapers. Applying this Court's reasoning in *Minneapolis Star*, the Louisiana appellate court explicitly held that "disparate tax treatment of some First Amendment entities is the type of 'singling out' that the United States Supreme Court held unconstitutional in *Minneapolis Star*." 504 So. 2d, at 905. Thus, the Louisiana appellate court held that such disparate tax treatment is unconstitutional absent a compelling state interest, and then found that the State had not shown any such interest. *Id. Louisiana Life* directly conflicts with the decisions below in this case.

In contrast, in *Thomson Newspapers v. Florence*, 287 S.C. 305, 338 S.E.2d 324 (1985), the South Carolina Supreme Court reversed a lower court's decision which had held unconstitutional a city ordinance because it imposed a higher business license tax on newspapers than on any other businesses. In upholding the ordinance, the South Carolina Supreme Court held that this Court's decision in *Minneapolis Star* was inapplicable because only newspapers were subject to the particular Minnesota statute in question, while the South Carolina law taxed everyone. 338 S.E. 2d, at 325. The rationales of *Louisiana Life* and *Thomson Newspapers* are irreconcilable because *Louisiana Life* requires the government to justify differential taxation of the press, while *Thomson Newspapers* permits such differential taxation even

though no government justification whatsoever is offered to support it.

Furthermore, in an advisory opinion, the Florida Supreme Court recently stated that taxing some members of the media while exempting others—namely, movie producers—does not constitute "discriminatory taxation" under *Minneapolis Star*. *In Re Advisory Opinion to the Governor*, 509 So. 2d 292, 309 (Fla. 1987). This decision directly contradicts the holding in *Louisiana Life* that "singling out" of certain media for favorable tax treatment is unconstitutional. Thus, there is a clear conflict between state courts on the issue of differential taxation of the media.[6]

Indeed, the California Court of Appeal's decision here is even inconsistent with the decision of the California Court of Appeal, First Appellate District, in *City of Alameda v. Premier Communications Network, Inc.*, 156 Cal. App. 3d 148, 202 Cal. Rptr. 684, *cert. denied*, 469 U.S. 1073 (1984). In *Premier*, the Court of Appeal, relying on *Minneapolis Star*, properly invalidated an Alameda city tax ordinance which imposed a different tax burden upon subscription television services than on many other businesses without directly advancing any compelling government interest. *See also Festival Enterprises, Inc. v. Pleasant Hill*, 182 Cal. App. 3d 960, 227 Cal. Rptr. 601 (1986) (invalidating, under *Minneapolis Star*, a municipal "admissions tax" on entertainment events where the plaintiffs' movie theaters were the only businesses actually subject to the tax).

---

[6] Because of the Tax Injunction Act, 28 U.S.C. § 1341, there are no federal court decisions on the constitutionality of such state tax schemes. *Ragland*, slip op., at 11, 107 S. Ct., at 1730.

In the present case, the Second Appellate District refused to find the challenged provisions of the Los Angeles Municipal Code unconstitutional, even though they tax various types of media at different rates, and even though the City of Los Angeles has made no attempt whatsoever to provide any justification, let alone a compelling one, for this differential treatment. Despite this clear conflict in authority, the California Supreme Court denied, without explanation, appellants' Petition For Review. Thus, even within the State of California, there are two conflicting lines of authority with regard to differential taxation of First Amendment activities.

Finally, the Court of Appeal's decision on the last question presented by this case, namely, whether the City may grant standardless discretion to a government official to apportion taxes on the media, is squarely at odds with *Big Mama Rag v. United States*, 631 F.2d 1030 (D.C. Cir. 1980). There, the District of Columbia Circuit held that certain language contained in IRS regulations on tax exemptions for educational institutions was so vague that it gave the IRS excessive discretion in granting or denying exemptions. *Id.*, at 1034-35. The court found that this excessive discretion violated the First Amendment: "The standards may not be so imprecise that they afford latitude to individual IRS officials to pass judgment on the content and quality of an applicant's views and goals and therefore to discriminate against those engaged in protected First Amendment activities." *Id.*, at 1040. The decision of the Court of Appeal here cannot be reconciled with the federal court's decision in *Big Mama Rag*, despite the Court of

Appeal's unexplained assertion that the distinctions are "obvious." App. A, *infra*, at 24a.

Thus, there is a well-developed conflict in the lower courts with respect to each of the constitutional issues presented by this appeal. Accordingly, the need for this Court to determine the application of the federal constitution to differential taxation of various types of media, and to the granting of broad discretion to government officials with respect to taxation of the media, is both clear and immediate.

CONCLUSION

Probable jurisdiction should be noted and this case set for argument to resolve the substantial federal constitutional questions which have been decided adversely to appellants, notwithstanding contrary and controlling precedent in this Court, and to resolve the conflict in result and analysis among the federal and state courts which have considered these questions.

December 1, 1987.

Respectfully submitted,

Of Counsel:
ROBERT S. WARREN
WILLIAM C. FOUTZ
KELLI L. SAGER
GIBSON, DUNN & CRUTCHER

REX S. HEINKE
GIBSON, DUNN & CRUTCHER
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7551
Attorney for Appellants and Counsel of Record

Of Counsel:

WILLIAM A. NIESE
JEFFREY S. KLEIN
THE TIMES MIRROR COMPANY

FRED L. LEYDORF
HUFSTEDLER, MILLER, CARLSON
& BEARDSLEY

FRANK SIMPSON III
KATHYLEEN A. O'BRIEN
SHEPPARD, MULLIN, RICHTER
& HAMPTON

APPENDIX

APPENDIX A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION TWO

No. B023000
(Super.Ct.No. C 511941)

THE TIMES MIRROR COMPANY, TRIBUNE NEWSPAPERS WEST, INC., and LOZANO ENTERPRISES,
Plaintiffs and Appellants,

v.

THE CITY OF LOS ANGELES, and DOES 1 through 50, inclusive,

Defendants and Respondents.

FILED
MAY 28, 1987

APPEAL from a judgment of the Superior Court of Los Angeles County. John L. Cole, Judge. Affirmed.

Gibson, Dunn & Crutcher, Rex S. Heinke, William C. Foutz, and Kelli L. Sager; The Times Mirror Company, William A. Niese and Jeffrey S. Klein for Plaintiff and Appellant, The Times Mirror Company.

Hufstedler, Miller, Carlson & Beardsley and Fred L. Leydorf for Plaintiff and Appellant, Tribune Newspapers West, Inc.

Sheppard, Mullin, Richter & Hampton, Frank Simpson III and Kathyleen A. O'Brien for Plaintiff and Appellant Lozano Enterprises.

Harry P. Warner as Amicus Curiae on behalf of Southern California Broadcasters Association and National Association of Broadcasters; Henry L. Baumann, of Counsel, as Amicus Curiae on behalf of National Association of Broadcasters.

James K. Hahn, Los Angeles City Attorney, Thomas C. Bonaventura, Senior Assistant City Attorney, Richard A. Dawson, Assistant City Attorney and Michael L. Klekner, Deputy City Attorney, for Defendant and Respondent, City of Los Angeles.

In an action for declaratory relief, injunction, and recovery of taxes paid under protest by plaintiffs Times Mirror Company, Tribune Newspapers West, Inc., and Lozano Enterprises, each engaged in the printing and publication of a daily newspaper or newspapers,[1] the trial court determined that a business tax levied against them by defendant City of Los Angeles (City) was constitutionally valid. Summary judgment was thereafter entered in favor of the City and this appeal followed. We affirm.

The facts are undisputed. Los Angeles Municipal Code (L.A.M.C.) section 21.03 requires that a business tax registration certificate must be obtained and a business tax paid by every person who engages in any of the businesses or occupations enumerated in subsequent sections. The section further provides that the tax is imposed pursuant to the City's taxing power solely for the purpose of gener-

[1] During and prior to 1984, the Times Mirror Company published the Los Angeles Times and Lozano Enterprises published La Opinion. Although at the outset of this litigation Tribune Newspapers West, Inc. published both the Daily News and the Greensheet Shopper, the Daily News is currently owned and published by the Cooke Media Group, Inc.

ating revenue.[2] Different businesses pay taxes calculated by a variety of methods, including flat fees, "per unit" fees, daily charges, percentages of payroll, and percentages of gross receipts.[3]

Prior to January 1984, the code expressly exempted from the business tax gross receipts derived from "the publication and sale of newspapers, magazines and other periodicals regularly issued at intervals not exceeding three months" as well as the gross receipts of businesses engaged in radio and television broadcasting. (Former L.A.M.C. § 21.190(c)(7) and (8).) In 1983, however, the City Council amended the code to eliminate these exemptions and inserted provisions taxing receipts derived from newspaper sales and advertising (L.A.M.C. §§ 21.166(f), 21.167(e)) and from radio and television broadcasting (L.A.M.C. § 21.189.2). As part of this change, the business of "publishing or publishing and printing" was included within the term "manufacturing" and "newspapers, mag-

---

[2] L.A.M.C. section 21.03 provides in pertinent part:

"(a) Subject to the provisions of this Article, a business tax registration certificate must be obtained and a business tax must be paid by every person engaged in any of the businesses or occupations specified in Sections 21.50 to 21.198, inclusive, of this Article; and a business tax is hereby imposed in the amount prescribed in the applicable section. No person shall engage in any business or occupation subject to tax under the provisions of this Article without obtaining a registration certificate and paying the tax required thereunder.

"(b) The business tax registration certificate required to be obtained and the tax required to be paid are hereby declared to be required pursuant to the taxing power of the City of Los Angeles solely for the purpose of obtaining revenue. Compliance with such requirements shall not be construed to be a condition precedent to engaging in any business or occupation within the City of Los Angeles where the imposition of such a condition precedent would be contrary to law."

[3] For the 1984 tax year, 273,125 businesses were subject to the municipal ordinance which raised over $131 million in revenues for the City. In 1985, 250,653 "accounts" generated approximately $142 million in revenue.

azines, periodicals, books and other printed matter" were classified as "goods, wares or merchandise." Pursuant to L.A.M.C. section 21.166, wholesale newspaper sales became subject to an annual business tax of $20.00 per year for the first $20,000 of gross receipts, and $1.00 for each additional $1,000 of gross receipts or fractional part thereof. (L.A.M.C. § 21.166(a).) Under L.A.M.C. section 21.167, retail newspaper sales became taxed at the rate of $18.75 for the first $15,000 of gross receipts plus $1.25 for each additional $1,000 of gross receipts or fractional part thereof. (L.A.M.C. § 21.167(a).)[4]

---

[4] Both L.A.M.C. sections 21.166 and 21.167 establish generic classifications and tax rates for all wholesale and retail business activities within the City.

Section 21.166 provides in relevant part:

"(a) For every person manufacturing and selling any goods, wares or merchandise at wholesale, or selling any goods, wares or merchandise at wholesale, and not otherwise specifically taxed by other provisions of this Article, the tax shall be $20.00 per year or fractional part thereof for the first $20,000.00 or less of gross receipts, plus $1.00 per year for each additional $1,000.00 of gross receipts or fractional part thereof in excess of $20,000.00; provided that blind persons need not include the first $20,000.00 of gross receipts in the computation of the amount of tax due hereunder, nor be required to pay the minimum tax of $20.00. This exemption shall not subject such blind person to the provisions of Section 21.190 of this Code. (Amended by Ord. No. 140,833, Operative 1/1/71.)

"(b) For the purpose of this section, a wholesale sale or sale at wholesale means a sale of goods, wares or merchandise for the purpose of resale in the regular course of business.

". . . .

"(f) For the purpose of this section, newspapers, magazines, periodicals, books and other printed matter shall be deemed to be included in the term "goods, wares or merchandise"; publishing or publishing and printing shall be deemed to be included in the term "manufacturing"; and the term "gross receipts" shall mean California receipts from the selling or furnishing of advertising or advertising space in printed matter in addition to California receipts from the sale of goods, wares

For purposes of determining the amount of tax due under the foregoing sections, revenue generated from the sale or furnishing of advertising by those engaged in publishing or publishing and printing was included within

---

and merchandise. The provisions of this subsection shall apply only to business tax periods commencing on or after January 1, 1984. (Added by Ord. No. 158, 484, Eff. 12/29/83.)"

Section 21.167 states in part:

"(a) For every person manufacturing and selling any goods, wares or merchandise at retail or selling any goods, wares or merchandise at retail, and not otherwise specifically taxed by other provisions of this Article, the tax shall be $18.75 per year or fractional part thereof for the first $15,000.00 or less of gross receipts, plus $1.25 per year for each additional $1,000.00 of gross receipts or fractional part thereof in excess of $15,000.00; provided that blind persons need not include the first $15,000.00 of gross receipts in the computation of the amount of tax due hereunder nor be required to pay the minimum tax of $18.75. This exemption shall not subject such blind person to the provisions of Section 21.190 of this Code. (Amended by Ord. No. 140,833, Operative 1/1/71.)

"(b) For the purpose of this section, a retail sale or sale at retail means a sale of goods, wares or merchandise for any purpose other than resale in the regular course of business.

"(c) Whenever a person engages at the same location in two or more businesses of the kind taxed in this section, a joint Registration Certificate shall be issued for all such businesses and the tax shall be measured by the sum of the gross receipts of all such businesses so conducted.

". . . .

"(e) For the purpose of this section, newspapers, magazines, periodicals, books and other printed matter shall be deemed to be included in the term "goods, wares or merchandise"; publishing or publishing and printing shall be deemed to be included in the term "manufacturing"; and the term "gross receipts" shall mean California receipts from the selling or furnishing of advertising or advertising space in printed matter in additional to California receipts from the sale of goods, wares or merchandise. The provisions of this subsection shall apply only to business tax periods commencing on or after January 1, 1984. (Added by Ord. No. 158,484, Eff. 12/29/83.)"

"gross receipts." As a further result of the amendments to the code, radio and television broadcasters became subject to the same tax rates imposed on retail newspaper sales. (L.A.M.C. § 21.189.2.)[5]

The ordinance further imposes a tax on all theaters in the City, including movie theaters, which is calculated in the same manner and at the same rate as the tax for retail sales under § 21.167. (L.A.M.C. § 21.147.) Section 21.192 requires those engaged in renting or leasing tangible personal property, including motion picture rentals, to pay a tax of $30.00 on the first $12,000 of gross receipts, and $2.50 for each additional $1,000 or fraction

---

[5] L.A.M.C. section 21.189.2 provides in pertinent part:

"(a) For every person engaged in business as a radio broadcaster or television broadcaster the tax shall be $18.75 per year or fractional part thereof for the first $15,000.00 or less of gross receipts, plus $1.25 per year for each additional $1,000.00 of gross receipts or fractional part therof in excess of $15,000.00.

"(b) For the purpose of this section, the following terms shall be defined as follows: 1. 'Radio Broadcaster' shall mean any person engaging in the business of producing and broadcasting or broadcasting local or network radio programs or advertising material, including but not limited to the furnishing of services, program elements or facilities in connection with such production and broadcasting or broadcasting. 2. 'Television Broadcaster' shall mean any person engaging in the business of producing and broadcasting or broadcasting local or network television programs or advertising material, including but not limited to the furnishing or services, program elements or facilities in connection with such production and broadcasting or broadcasting. A 'television broadcaster' shall include any person operating a television system where the viewing audience pays a fee to view the broadcast.

". . . .

"(e) The provisions of this section shall apply only to business tax periods commencing on or after January 1, 1984."

Prior to the 1984 amendments, the broadcast media were only subject to the business tax to the extent that they engaged in motion picture production and related activities.

thereof. Motion picture and cartoon production is classified and taxed under section 21.109. The measure of the tax is based upon the total of the gross costs of production and gross receipts from the lending of employees and the furnishing of studio facilities from other film producers. The tax itself is graduated and ranges from $125 for the first $50,000 of gross receipts and production costs, up to a maximum of $10,750 when the measure of the tax is $4.2 million and above.

In computing the tax owed under the ordinance, income received from the sale of goods shipped out of state is excluded from the gross receipts of both wholesale and retail businesses, including those engaged in the publication of printed material. (L.A.M.C. § 21.168.1.) L.A.M.C. section 21.15(h) further authorizes the City Clerk to promulgate rules and regulations for the apportionment of gross receipts "according to the amount of business done in the City of Los Angeles, or in the State of California, as the case may be, . . ." Pursuant thereto, Clerk's Rulings No. 13 and No. 14, relating to persons with and without a fixed place of business within the City, describe the manner in which gross receipts should and should not be considered "directly attributable" to local activities and provide procedures and practices to be followed in making that determination.

Based upon the foregoing provisions of the municipal ordinance, the Times Mirror Company paid under protest approximately $1.4 million in business taxes for the years 1984 and 1985. For the same period, Tribune Newspapers West, Inc. paid $202,000 and Lozano Enterprises paid $22,000. After exhausting their various administrative remedies to secure a refund from the City, plaintiffs initiated this litigation. Following argument on the newspapers' motion for summary judgment and the City's motion for summary adjudication of issues, the trial court found that the applicable provisions of the ordinance did not impose a special or discriminatory tax on the newspapers

or the media in general. It further held that L.A.M.C. section 21.15(h), authorizing the City Clerk to apportion gross receipt taxes, and the rulings promulgated thereunder (i.e., Tax Rulings Nos. 13 and 14) passed constitutional muster.

In urging us to reverse, plaintiffs first contend that the business tax is unconstitutional because it unjustifiably imposes a differential tax burden on a variety of First Amendment activities and discriminates between First Amendment and non-First Amendment enterprises. In support of this argument plaintiffs allege that "the tax on fifty million dollars in production costs for the motion picture industry would be $10,750; the same gross receipts received in a year through lectures, shows, or entertainment, would be taxed at only $155; a telephone company receiving the same amount of gross receipts for the Yellow Pages would owe the City $50,000; a billboard company . . . would owe the City $250,000 . . . a newspaper would owe a tax of $62,500 on its retail receipts or $50,000 on its wholesale receipts; and a radio or television broadcaster would owe $62,500. . . ." The newspapers further point out that the City taxes various non-First Amendment businesses at lower rates than those imposed on the broadcast and print media.[6]

The power of the City to levy taxes derives from Article XI, section 5 of the California Constitution which authorizes charter cities to "make and enforce all ordinances and regulations in respect to municipal affairs. . . ." Taxation for the purpose of generating revenue is a municipal affair within the meaning of Article XI. (*City of Los Angeles* v.

---

[6] As evidence of these lower rates, plaintiffs cite to provisions of the ordinance which tax amusement rides at an annual rate of $125 (L.A.M.C. §21.94), junk dealers at $500 per year (L.A.M.C. §21.100), shoe repair outlets at $0.75 per $1,000 (L.A.M.C. §21.186), and trucking-hauling companies at a maximum rate of $0.22 per day (L.A.M.C. §21.195).

A.E.C. Los Angeles (1973) 33 Cal. App.3d 933, 939.) A municipal taxing scheme is thus valid unless preempted by state law or prohibited by constitutional principles. (*United Business Com.* v. *City of San Diego* (1979) 91 Cal.App.3d 156, 164; *Century Plaza Hotel Co.* v. *City of Los Angeles* (1970) 7 Cal.App.3d 616, 622.) Here, of course, plaintiffs maintain that the City's business tax violates the constitutional guaranties of free speech and press.

The First Amendment prohibits the enactment of any law "abridging the freedom of speech, or of the press . . . ," and is applicable to state and municipal action pursuant to the Fourteenth Amendment. (*Douglas* v. *Jeannette* (1943) 319 U.S. 157, 162; *City of Alameda* v. *Premier Communications Network, Inc.* (1984) 156 Cal.App.3d 148, 152.)

There are two basic ways in which First Amendment rights may be impinged: (1) a direct regulation of speech or press based on the content of the material (see e.g., *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council* (1975) 425 U.S. 748; *Keyishian* v. *Board of Regents (1967) 385 U.S. 589; Mills* v. *Alabama* (1966) 384 U.S. 214); or (2) an indirect or incidental regulation of speech or press resulting from pursuit of governmental goals unrelated to freedom of expression (see e.g., *Buckley* v. *Valeo* (1976) 424 U.S. 1; *Branzburg* v. *Hayes* (1972) 408 U.S. 665; *Kovacs* v. *Cooper* (1949) 336 U.S. 77).

The instant case presents a question falling into the second category: the incidental or indirect impact of taxation on First Amendment activities. (See *Murdock* v. *Pennsylvania* (1943) 319 U.S. 105, 112.) The structure of the tax is not content oriented.

Although the government may not unduly burden freedom of speech or of the press through taxation or other regulatory measures, it is beyond dispute that the provisions of the First and Fourteenth Amendments do not exempt newspapers and the business of newspaper pub-

lication from generally applicable economic regulations and taxes. (*Grosjean* v. *American Press Co.* (1936) 297 U.S. 233, 249; *Festival Enterprises, Inc.* v. *City of Pleasant Hill (1986) 182 Cal.App.3d 960, 963; City of Corona* v. *Corona etc. Independent* (1953) 115 Cal.App.2d 382, 387.)

The state has the power to enact statutes which impose taxes on all businesses, including the press, in order to generate revenue so long as those laws operate even-handedly upon all similarly situated. (*Fox etc. Corp.* v. *City of Bakersfield* (1950) 36 Cal.2d 136, 142.) "The power to create classifications for taxation purposes is a broad one, within the discretion of the Legislature, and is subject only to limitations of the state and federal Constitutions." (*Festival Enterprises, Inc.* v. *City of Pleasant Hill, supra,* 182 Cal.App.3d at p. 963.)

Although plaintiffs recognize these general precepts of constitutional law, they contend that here the City has exceeded the limitations of its taxing power. Relying on *Minneapolis Star* v. *Minnesota Comm'r of Rev.* (1983) 460 U.S. 575 and *City of Alameda* v. *Premier Communications Network, supra,* 156 Cal.App.3d 148, plaintiffs claim that the structure of the City's business tax treats them differently than other similarly situated taxpayers and thus impermissibly impinges on their exercise of First Amendment rights.

In *Minneapolis Star,* the United States Supreme Court held a Minnesota use tax which applied to "publications" to be an unconstitutional burden on the press. While acknowledging decisions upholding economic regulations generally applicable to all businesses, the court concluded that "[d]ifferential taxation of the press . . . places such a burden on the interests protected by the First Amendment that we cannot countenance such treatment unless the State asserts a counterbalancing interest of compelling importance that it cannot achieve without differential taxa-

tion." (*Minneapolis Star* v. *Minnesota Comm'r of Rev., supra,* 460 U.S. 575, 585.)

The statute at issue in *Minneapolis Star* imposed a general sales tax on the sale of goods above a certain minimum price and a use tax on the "privilege of using, storing or consuming in Minnesota tangible personal property" which was not specifically exempt by statute and on which no sales tax was paid. As the court noted, this was a classic use tax designed to complement and protect the sales tax by eliminating a resident's incentive to travel to states with lower sales tax and purchase goods there rather than in Minnesota. Such taxes, in essence, require a resident who shops out of state to pay a "use tax" equal to the sales tax savings. The Minnesota statute provided an exemption from the sales tax for periodic publications, which the plaintiff, the Minneapolis Star & Tribune Company, had enjoyed from 1967 to 1971.

In 1971, the Minnesota Legislature amended the statute to impose a special use tax on the costs of ink and paper used in producing periodic publications, while leaving intact the publication's exemption from the sales tax. The amendment had the effect of creating the only situation in the entire tax scheme where components of goods that were later to be sold at retail were taxed. In all other situations, tax was assessed only when the finished product was purchased by the ultimate user. The only components taxed were ink and paper used in periodic publications. As a result, the tax fell exclusively upon the press. The statute was subsequently amended to exempt from the use tax the first $100,000 worth of ink and paper used in any calendar year by a publication so that, in practice, only a few publishers in the state were subjected to use taxation.

These unique features of the Minnesota use tax, not the mere fact that the press was being taxed, led the court to declare the amended statute unconstitutional. In doing so, however, the court stressed that "the states and the

federal government can subject newspapers to generally applicable economic regulations without creating constitutional problems. (*Minneapolis Star* v. *Minnesota Comm'r of Rev., supra,* 460 U.S. 575, 581.) The majority noted that "[a]ny tax that the press must pay, of course, imposes some 'burden.' But, as we have observed, [citation] this Court has long upheld economic regulation of the press. The cases approving such economic regulation, however, emphasized the general applicability of the challenged regulation to all businesses. . . . " (*Id.,* at p. 583.)

The Minnesota statute failed because it singled out the press for differential tax treatment. The only supporting rationale was the need for revenue -- a need which the court noted was better served by taxing all businesses equally. The law did not serve to complement the state's sales tax, as do most use tax statutes, since it imposed a use tax on publications which were specifically exempt by statute from the state's sales tax. The court emphasized, however, that had the tax been a generally applicable sales tax it would probably have been constitutionally permissible. Responding to the argument that the use tax was merely a less onerous, substitute tax which could be generally and permissibly applied to the press, the court held that the state had offered no adequate justification for the differential tax, which was impermissible even if it did not currently impose a greater effective burden since "the very selection of the press for special treatment threatens the press not only with the current *differential* treatment, but also with the possibility of subsequent differential *more burdensome* treatment." (*Id.,* at p. 588; emphasis in original.)[7]

---

[7] The court also found that the statute was unconstitutional because the use tax, which exempted the first $100,000 of paper and ink used in any calendar year, unfairly targeted a limited number of publishers whose use of such products exceeded the exempt amount. Noting that no similar exemption existed for other small enterprises, the court held

In *City of Alameda* v. *Premier Communications Network, Inc., supra,* 156 Cal.App.3d 148, the Court of Appeal for the First District applied the rational of *Minneapolis Star* in striking down a local business license tax on television subscription service companies. Although the municipal ordinance at issue applied to eighty-seven types of businesses, only four were required to pay a gross receipts tax. Of these four, only two, television subscription and emergency communications services, were required to pay three percent of their gross receipts. Moreover, most businesses were permitted to pay an "in-lieu" gross receipts tax rather than the otherwise applicable tax set forth in the ordinance. Television subscription services, however, were not eligible to claim the in-lieu taxes. As a result, Premier's tax burden on its annual gross receipts of $210,000 was $8,300. If the company had been permitted to pay the in-lieu tax, its burden would have been only $472.

Concluding that only two types of businesses were required to pay three percent of gross receipts without any alternative, the court found the tax invalid, holding that Premier was taxed differently than the great majority of businesses and in a more burdensome manner. "Under the principles set forth in *Minneapolis Star,* the tax burden imposed upon Premier, a disseminator of protected speech, cannot stand unless that burden is necessary to achieve an overriding governmental interest. The only interest asserted to justify the differential tax burden is the generation of revenue. [Citation.] While that purpose is an interest critical to any government, it cannot, standing alone, justify special treatment of a segment of the media which disseminates protected speech when alternative means of achieving the same interest without implicating

---

that "to tailor the tax so that it singles out a few members of the press presents such a potential for abuse that no interest suggested by Minnesota can justify the scheme." (*Minneapolis Star v. Minnesota Comm'r of Rev., supra,* 460 U.S. 575, 592.)

First Amendment concerns are available. [Citation.]" (*City of Alameda* v. *Premier Communications Network, Inc., supra,* 156 Cal.App.3d 148 156.)

The municipal ordinance here does not possess the constitutional infirmities that were present in either *Minneapolis Star* or *Premier Communications.* Although the City's tax is levied upon the privilege of engaging in or transacting business, it is, on its face, and in fact, a tax for revenue purposes only, and does not grant or take away any right to do business. The tax is neither special nor unique and is generally applicable to all those engaged in wholesale or retail business activities. In no way does the tax resemble a penalty directed at only a few publications. (Cf. *Arkansas Writers' Project, Inc.* v. *Ragland (1987)* ___ U.S___ .) The press is not singled out for differential treatment since the tax rates established by the ordinance apply to all manufacturers and sellers alike, including publishers.

Plaintiffs nevertheless argue that both *Minneapolis Star* and *Premier Communications* stand for the proposition that all First Amendment activities must be taxed at the same rate and that there must be parity between First Amendment and non-First Amendment businesses. Neither the cases cited nor the constitution mandate such requirements.

Plaintiffs' challenge, which is couched in terms of equal protection, must stand or fall with the novel proposition that a municipality is powerless to employ more than one method of computing taxes for various businesses unless it can demonstrate some compelling justification for doing so. Although those engaged in protected speech may not be singled out for discriminatory tax treatment in the absence of counterbalancing governmental interest of compelling importance that cannot be achieved without differential taxation (*Festival Enterprises, Inc.* v. *City of Pleasant Hill, supra,* 182 Cal.App.3d 960, 964; *City of*

Alameda v. *Premier Communications Network, Inc., supra,* 156 Cal.App.3d 148, 153), no such counterbalancing interest need be present when the tax measure does not result in a discriminatory burdening of First Amendment rights. (*Vance* v. *Bradley* (1979) 440 U.S. 93; *Fox etc. Corp.* v. *City of Bakersfield, supra,* 36 Cal.2d 136, 141-142.)

Having determined that the City's ordinance does not impose a peculiar or differential burden on plaintiffs' businesses in violation of the First Amendment, we must only determine whether the varying rates established by the taxing scheme are "founded on natural, intrinsic or fundamental distinctions which are reasonable in their relation to the object of the legislation. . . ." (*Fox etc. Corp.* v. *City of Bakersfield, supra,* 36 Cal.2d at p. 142.)

The power of a municipality to classify for the purpose of taxation is very broad. Neither due process nor equal protection impose a rigid rule of equality in tax legislation. (*Henry's Restaurants of Pomona, Inc.* v. *State Bd. of Equalization* (1973) 30 Cal.App.3d 1009, 1016, and cases cited therein.) "It is well settled that occupations and businesses may be classified and subdivided for purposed of taxation, and it is within the discretion of the Legislature to exact different license taxes from different classes or subclasses of businesses, subject only to the limitations of the state and federal Constitutions in regard to equal protection of the laws. No constitutional rights are violated if the burden of the license tax falls equally upon all members of a class, though other classes have lighter burdens or are wholly exempt, provided that the classification is reasonable, based on substantial differences between the pursuits separately grouped, and is not arbitrary." (*Fox etc. Corp.* v. *City of Bakersfield, supra,* at p. 142; *Gutknecht* v. *City of Sausalito* (1974) 43 Cal.App.3d 269, 276; *Associated Home Builders etc., Inc.* v. *City of Newark* (1971) 18 Cal.App.3d 107, 109-110; *Clark* v. *City of San Pablo* (1969) 270 Cal.App.2d 121, 126-127.)

The power to license for purposes of generating revenue involves the right to make distinctions between different trades and between essentially different methods of conducting the same general character of business. (*See City of Los Angeles* v. *Crawshaw Mortgage & Inv. Co.* (1975) 51 Cal.App.3d 696, 703.)[8] "It is recognized that a legislative body may classify and subdivide classes within those engaged in one generic field of activity where there is a reasonable basis for such action. [Citations.]" (*Clark* v. *City of San Pablo, supra,* at p. 131.)

The classifications created by the City's taxing scheme are anything but arbitrary or unreasonable. On its face the ordinance purports to impose a tax on "every person manufacturing and selling goods, wares, or merchandise" at both the wholesale and retail levels. (L.A.M.C. §§ 21.166, 21.167.) Independent contractors and those engaged in the rental of tangible personal property also are taxed at specified rates. (L.A.M.C. §§ 21.190, 21.192.) By amendment,

---

[8] The U.S. Supreme Court's observations in *Regan* v. *Taxation With Representation of Wash.* (1983) 461 U.S. 540, 547-548 are particularly applicable here: "Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. More than 40 years ago we addressed these comments to an equal protection challenge to tax legislation: 'The broad discretion as to classifications possessed by a legislature in the field of taxation has long been recognized. . . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.' [Citation.]"

newspapers and other periodicals are classified as "goods, wares, or merchandise" while publishing and printing are categorized as "manufacturing."

These various distinctions flow naturally from differences in the methods and procedures used in conducting the business activities subject to the ordinance and thus afford an acceptable basis for imposing disparate rates of taxation. (See *Alco Plating Corp.* v. *City of Los Angeles* (1974) 39 Cal.App.3d 948, 951-952.) Within each broad classification, however, all businesses are taxed similarly.

Even a cursory review of the law reveals that all members of the press are treated alike; that the press and all other publishing enterprises are treated similarly; and that all publishing enterprises are treated identically with other wholesalers and retailers. The City has not created an artificial class of businesses in order to tax some who are engaged in the same business and not others. The amount of plaintiffs' tax is determined by no means other than by the amount of their business activities. (See *City of Los Angeles* v. *Lankershim* (1911) 160 Cal. 800, 804.)

Plaintiffs' argument that the municipal tax scheme is unconstitutional because the City has chosen to use a different method of computing the tax levied against motion picture production than it has for newspaper publication or radio and television broadcasting is unpersuasive. The inherent difference between these various forms of mass media is patent. These differences are reflected in the ways in which the ultimate product is conceived, produced, disseminated, and exhibited.

Plaintiffs nonetheless maintain that they should be required to pay no more in taxes than a film producer with the same gross receipts. They have not shown, nor can they show, that a producer, in making a film, operates in a manner similar to a business which manufactures and sells daily newspapers or to any other retailer or wholesaler. Plaintiffs' analysis also ignores the fact that the

motion picture industry is highly fragmented (see e.g., *United States* v. *Paramount Pictures* (1948) 334 U.S. 131) and that the City separately classifies and taxes each of these various fragments as different business activities.[9]

Even if the cap on the amount of tax imposed on motion picture production is viewed as a subsidy of that business, it would not afford plaintiffs a basis for attacking the tax scheme. If the state subsidizes some First Amendment activity but not all, no subject classification is created. Conversely, the failure "to subsidize the exercise of a fundamental right does not infringe [that] right." (*Regan* v. *Taxation with Representation of Wash., supra,* 461 U.S. 540, 549.)

Furthermore, occupations and businesses, including the entertainment industry, may be properly subdivided and separately classified if the classification is founded on natural, intrinsic or fundamental distinctions which are reasonable in their relation to the object of the legislation. (See *City of Berkeley* v. *Oakland Raiders* (1983) 143 Cal.App.3d 636, 639; *United Business Com.* v. *City of San Diego* (1979) 91 Cal.App.3d 156, 178.) In other words, the classification within the ordinance does not violate equal protection "if the distinction rests upon a rational basis, and it must be presumed to rest on that basis if there is any conceivable state of facts which would support it." (*City of San Jose* v. *Donohue* (1975) 51 Cal.App.3d 40, 45.)

We conclude that the tax rate distinctions which may exist between different members of the media and between the media and other taxpayers are constitutionally permissible and in no way impinge on the exercise of plaintiffs' rights under the First Amendment.

Next we reject plaintiffs' contention that the ordinance is unconstitutional on its face because it grants the city

---

[9] Motion picture production is taxed by L.A.M.C. section 21.109; distribution (vis-a-vis sales) by sections 21.166 and 21.167; exhibition by section 21.147; and rentals by section 21.192.

clerk absolute discretion in apportioning the amount of gross receipt taxes to be collected from businesses engaged in protected First Amendment activities. Apportionment is required to prevent the tax from having an extraterritorial impact.

L.A.M.C. section 21.15(h) provides in relevant part: "When, by reason of the provisions of the Constitution of the United States or the Constitution of California, the business tax imposed by this Article cannot be enforced without there being an apportionment according to the amount of business done in the City of Los Angeles, or in the State of California, as the case may be, the City Clerk may make such rules and regulations for the apportionment of the tax as are necessary or desirable to overcome the constitutional objections." Pursuant to the authority granted him by this section, the city clerk adopted Tax Rulings Nos. 13 and 14 for the apportionment of gross receipts of taxpayers subject to sections 21.166 and 21.167. Each is applicable to all businesses classified as either a wholesaler or retailer, including those engaged in the business of publishing or publishing and printing. The rulings essentially provide for an apportionment formula based upon various specified physical elements[10] and

---

[10] Pursuant to Rule No. 13, the measure of tax for "a person who does not own, lease, occupy or otherwise maintain within the City of Los Angeles a place or premises upon which or from which he engages in business" is as follows: "(a) 35% of those gross receipts from all sales to customers located within the City of Los Angeles, where delivery or shipment is made to points within the City by vehicles operated by the taxpayer. (b) 30% of those gross receipts from all sales to customers located within the City of Los Angeles where delivery or shipment is made to points within the City by means other than vehicles operated by the taxpayer regardless of the f.o.b. point or other conditions of sale. (c) 30% of those gross receipts from all sales to customers located within the City of Los Angeles where delivery or shipment is made to points outside the City."

Under Rule No. 14, the measure of tax for "[a] person who man-

further provide that any taxpayer who believes that the percentages do not apply to his or her particular business

---

ufactures any goods, wares, or merchandise within the City of Los Angeles" is "the total gross receipts from the sale of goods manufactured in the City." The regulation further provides that "[a] person who owns, leases, occupies or otherwise maintains within the City a place or premises upon which, or from which he engages in the business of selling goods, wares, and merchandise, *not manufactured by the taxpayer in the City and whose gross receipts from such sales are attributable to business activities carried on within the City and activities carried on outside the City*, may apportion such gross receipts *directly attributable* to activities carried on within the City. [] In making a calculation of gross receipts to be reported as the measure of tax, the person may deduct from 100% of gross receipts the percentage of gross receipts deemed to be directly attributable to selling activities carried on by such person outside the City of Los Angeles. For the purpose of this calculation, the person may deduct . . . the following percentages of those sales, or particular categories of sales, on which the corresponding elements of the selling process are performed at a place or location outside the City:

"1. Up to 30% for the location where the sale is negotiated or solici ed by the taxpayer, through the physical presence of himself, his employees or his agents.

"2. Up to 20% for the sales office which serves as the base of operations for sales activities, or if there is no sales office which serves as a base of operations, the office from which the sale activities are directed or controlled.

"3. Up to 10% for the location where orders or contracts are accepted or approved. Such acceptance or approval shall be deemed to take place at the location of the office specified in item 2 above, unless there is clear and conclusive evidence that a binding acceptance of approval occurs elsewhere.

"4. Up to 20% for any facility, operated by the taxpayer, where the goods, wares or merchandise are stored immediately prior to shipment or delivery.

"5. Up to 5% for the location which gives the order for, or arranges for, the shipment or delivery of articles sold.

"6. Up to 5% for the place where billing procedures are performed.

"7. Up to 5% for the place where the collecting of receipts is per-

may petition the city clerk for a modification of the formula. The taxpayer has the burden of establishing the modification.

Relying on a series of United States Supreme Court decisions which hold that a public official may not be granted unfettered discretion to deny or regulate the issuance of licenses or permits, thus limiting or restricting access to protected speech (see e.g., *Shuttlesworth* v. *Birmingham* (1969) 394 U.S. 147; *Kunz* v. *New York* (1951) 340 U.S. 290; *Schneider* v. *State* (1939) 308 U.S. 147), plaintiffs argue that the City's ordinance infringes upon their First Amendment rights by giving the city clerk blanket authority to prescribe formulas for the apportionment of taxes. Plaintiffs' reliance on these cases is totally misplaced.

The business tax with which we are here concerned is strictly a revenue measure. While a registration certificate is required by L.A.M.C. section 21.03, no conditions are placed upon the right to such a document. The certificate is required not to regulate but to expedite the collection of revenue. (See *City of Los Angeles* v. *A.E.C. Los Angeles, supra*, 33 Cal.App.3d 933, 940.) Plaintiffs nonetheless contend that "it is difficult to see any distinction between a 'licensing' ordinance and the City Tax Ordinance as written" apparently because of the various provisions of the law relating to enforcement procedures. These procedures, however, do nothing more than insure the collection and remittance of the tax and assure that accounting and record keeping standards are properly maintained. Such regulations are necessary adjuncts to the municipal taxing power and in no manner restrict access to protected speech.[11]

---

formed.

"8. Up to 5% for the place to which merchandise is delivered, by vehicles operated by the taxpayer." (Emphasis added.)

[11] Much of plaintiffs' argument relates to L.A.M.C. section 21.189.2.

The argument that section 21.15(h) is unconstitutional because it does not provide any formula, rule or specific standard for the apportionment of gross receipts is equally unavailing. It has long been established that a legislative body need not prescribe the exact means by which a tax is to be fixed but may delegate to its taxing officers the power to adopt a suitable method. (*El Dorado Oil Works* v. *McColgan* (1950) 34 Cal.2d 731, 737-738; *Pacific Fruit Express Co.* v. *McColgan* (1944) 67 Cal.App.2d 93, 101-102.) "The essential requirement is the Legislature's specification of a standard -- 'an intelligible principle to which the person or body authorized to [administer the act] is directed to conform' [citation] -- but it may leave to the administrative agency the precise determination necessary to bring the standard into operation." (*El Dorado Oil*

That section, however, pertains only to radio and television broadcasters and, by its very terms, has no application to the publication of newspapers or other printed matter. Subdivisions (c) and (d) provide as follows: "When gross receipts are constitutionally required to be apportioned and are derived from or attributable to activities engaged in within and without the City, gross receipts shall be apportioned in a manner that is fairly calculated to determine the amount of gross receipts derived from or attributable to engaging in business in the City. Such apportionment shall be made on the basis of payroll, value and situs of tangible property, general expense, or by reference to any of these or other factors, or by any other method of apportionment as will fairly determine the amount of gross receipts derived from or attributable to engaging in business in the City. Gross receipts derived from or attributable to sources within the City shall include gross receipts from any activities carried on in this City. (d) Notwithstanding the foregoing, gross receipts used in the measurement of the tax under this section shall be limited to receipts which are generated, produced, or attributable to local activities, in the State of California."

So far as we can discern, the city clerk has not promulgated any formulae for the apportionment of taxes levied under section 21.189.2. Were it necessary to so decide, we would have no difficulty in concluding that the city council's delegation of authority comports with the principles discussed *infra*. Since plaintiffs are in the publishing, not broadcasting business and are in no way subject to the provisions of section 21.189.2, we need not address this issue in the contest of this case.

Works v. *McColgan, supra,* 34 Cal.2d 731, 738.) Section 25.12(h) surely complies with this principle by directing the city clerk to make "such rules and regulations for the apportionment of the tax as are necessary or desirable" to satisfy the demands of both the federal and state constitutions. (Cf. *El Dorado Oil Works* v. *McColgan, supra,* 34 Cal.2d 731).

Citing to *Big Mama Rag, Inc.* v. *United States* (1980 D.C. Cir.) 631 F.2d 1030, plaintiffs appear to argue that the apportionment formulae set forth in Tax Rulings Nos. 13 and 14 must fall before the First Amendment unless the classifications established by the clerk can be justified by a compelling state interest. We disagree.

In *Big Mama Rag, Inc.,* a newspaper's application for tax exempt status was denied because it could not qualify as an "educational institution" as that term had been defined by an Internal Revenue Service regulation. Finding that the definition was overly vague and that the subjective criteria used to evaluate the application was based upon the content of protected speech, the court struck down the regulation as unconstitutional. In so holding the court observed: "[R]egulations authorizing tax exemption may not be so unclear as to afford latitude for subjective application by IRS officials. . . . (*Id.,* at p. 1034). Applications for tax exemption must be evaluated . . . on the basis of criteria capable of neutral application. The standards may not be so imprecise that they afford latitude to individual IRS officials to pass judgment on the content and quality of an applicant's views and goals and therefore to discriminate against those engaged in protected First Amendment activities." (*Id.,* at p. 1040.)

The distinction between apportionment and the granting or withholding of a tax exemption is obvious. The city council here has not delegated to the clerk the authority to decide who pays the business tax or when. That official merely determines the manner in which the tax is to be

computed based upon objective criteria that is content neutral and relates only to the amount of revenue generated within the City.

Although the formulation of the criteria requires the exercise of judgment, abuses of such judgment are checked both by extensive administrative review and by prompt post-determination access to the courts. Contrary to the arguments advanced by plaintiffs, neither L.A.M.C. section 21.15(h) nor the clerk's tax rulings impose any burden on the exercise of their First Amendment rights. We find no indication that the regulations were intended to suppress any ideas or any demonstration that they have had that effect. Under the circumstances, the various classifications established by the rulings need not be justified by the showing of a compelling state interest.

There is no constitutional prohibition against local taxes upon businesses "doing business" both within and outside the taxing jurisdiction so long "as such taxes are apportioned in a manner by which the measure of tax fairly reflects that proportion of the taxed activity which is actually carried on within the taxing jurisdiction. . . . " (*City of Los Angeles* v. *Shell Oil Co.* (1971) 4 Cal.3d 108, 124; *City of Los Angeles* v. *London Towne Livery Service, Ltd.* (1979) 97 Cal.App.3d 814, 816-817.) Here, the promulgation of the tax rulings constitute a permissible exercise of administrative discretion that fully carries out the intent of the city council. They describe, in a detailed fashion, the manner in which taxes are to be apportioned according to the amount of business activity done within and without the city. The various formulae set forth in the regulations cannot be characterized as arbitrary, capricious or patently unreasonable. As such, we need not inquire further into the clerk's exercise of authority properly delegated to him by the city council.

We have thoroughly considered plaintiffs' remaining arguments and find none that warrant further consideration.

The judgment is affirmed.

CERTIFIED FOR PUBLICATION.

/s/COMPTON, ACTING P.J.
COMPTON

We concur:

/s/GATES, J.
GATES

/s/FUKOTO, J.
FUKOTO

APPENDIX B

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 2, No. B023000 S001449

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

TIMES MIRROR COMPANY et al
v.
CITY OF LOS ANGELES

SUPREME COURT
FILED
SEP 3 1987
LAURENCE P. GILL, CLERK
DEPUTY

Appellants' petition for review DENIED.

Mosk, J., is of the opinion the petition should be granted.

LUCAS
Chief Justice

APPENDIX C

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE SECOND APPELLATE DISTRICT
DIVISION: 2

Gibson, Dunn & Crutcher
Rex S. Heinke
333 So. Grand Ave.

Los Angeles, CA 90071

RP: Times Mirror Company, The, Et. Al.
vs.
Los Angeles, City of, Et Al.
2 Civil B023000
Los Angeles No. C511941

*** * REMITTITUR NOTICE * ***

Notice is hereby given that the Remittitur has been issued this date and that the opinion, decision or order entered in the above entitled cause of 05/28/87 is now final.

* * Affirmed In Full * *

---Appellant ✓ Respondent to recover costs.
---Each party to bear own costs.
---Costs are not awarded in this proceeding.

CLAY ROBBINS, JR., Clerk
OCTOBER 2, 1987
By:
Deputy Clerk

APPENDIX D

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

Civil No. B 023000

(Superior Court No. C 511941)

THE TIMES MIRROR COMPANY, TRIBUNE NEWSPAPERS WEST, INC., AND LOZANO ENTERPRISES,

Plaintiffs,

vs.

THE CITY OF LOS ANGELES, and DOES 1 through 50, inclusive,

Defendants

CLERK'S OFFICE
COURT OF APPEAL—SECOND DIST.
RECEIVED
NOV 18 1987
ROBERT N. WILSON, Clerk

NOTICE OF APPEAL

Plaintiffs The Times Mirror Company, Tribune Newspapers West, Inc., and Lozano Enterprises appeal to the United States Supreme Court, pursuant to 28 U.S.C. §1257(2), from the Order of May 28, 1987 affirming judgment against plaintiffs and in favor of defendant The City of Los Angeles.

DATED: November 17, 1987

GIBSON, DUNN & CRUTCHER
REX S. HEINKE

WILLIAM C. FOUTZ
KELLI L. SAGER

THE TIMES MIRROR COMPANY
WILLIAM A. NIESE
JEFFREY S. KLEIN

HUFSTEDLER, MILLER, CARLSON & BEARDSLEY
FRED L. LEYDORF

SHEPPARD, MULLIN, RICHTER & HAMPTON
FRANK SIMPSON III
KATHLEEN A. O'BRIEN

By:/s/Rex S. Heinke
Rex S. Heinke

Attorneys for Plaintiffs
The Times Mirror Company, Tribune Newspapers West, Inc., and Lozano Enterprises

PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.

JANET FARAGHER certifies as follows:

I am a citizen of the United States and am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, California 90071, in said County and State; on the 18th day of November, 1987, I served the within:

NOTICE OF APPEAL

on the parties in this action, by placing a true copy thereof in an envelope addressed to attorneys of record, addressed as follows:

SEE ATTACHED SERVICE LIST

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the mail at Los Angeles, California; that there is a regular communication between the place of mailing and the place so addressed.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on November 18, 1987, at Los Angeles, California.

/s/JANET FARAGHER Declarant
JANET FARAGHER

SERVICE LIST

Richard A. Dawson, Esq.
Assistant City Attorney
1800 City Hall East
Los Angeles, CA 90012

Hon. John L. Cole
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Clerk
Supreme Court of the State of California
3580 Wilshire Blvd., Room 213
Los Angeles, CA 90010

APPENDIX E

SEC.21.15 CITY CLERK - DUTY TO ENFORCE - POWERS - RULES AND REGULATIONS:

(a) Duty to Enforce. It shall be the duty of the City Clerk, and he is hereby directed, to enforce each and all of the provisions of this Article and Article 1.5, and the Chief of Police shall render such assistance in the enforcement of this Article and Article 1.5 as may from time to time be required by the City Clerk.

(b) Inspection and Examination of Places of Business. The City Clerk in the exercise of the duties imposed upon him, and acting through his deputies, shall inspect and examine all places of business in the City to ascertain whether or not the provisions of this Article and Article 1.5 have been complied with.

(c) Audit and Examination of Records and Equipment. The City Clerk and the City Controller, and deputies of each of them, shall have the power to audit and examine all books and records, and where necessary, all equipment, of any person engaged in business in the City for the purpose of ascertaining the amount of business tax, sales or use tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying the statements, or any item thereof, when filed by any taxpayer pursuant to the provisions of Secs. 21.13, 21.14 or 21.199, or Article 1.5. If such person, after written demand by the City Clerk or City Controller, or a deputy of either, refuses to make available for audit, examination or verification such books, records or equipment as the City Clerk, City Controller, or deputy of either, request, the City Clerk may, after full consideration of all information within his knowledge concerning the business and activities of the person so refusing, make an assessment in the manner provided in Sec. 21.16 of any taxes estimated to be due.

(d) Inspection of Registration Certificates, etc. The City Clerk and all of his deputies shall have the power and authority to enter, free of charge, during business hours, any place of business required to be registered and taxed by the provisions of this Article or Article 1.5, and to demand exhibition of a business registration certificate and sales or use tax permit and evidence of amount of tax paid. Any person having any such business tax registration certificate, or sales or use tax permit, heretofore issued in his possession or under his control who fails to exhibit the same as well as evidence of amounts of tax paid on demand shall be guilty of a misdemeanor and subject to the penalty provided for by the provisions of this Code.

(e) Extensions of Time for Filing. The City Clerk may, upon receipt of the written request of a taxpayer, and for good cause, extend the time for filing any statement required under the provisions of Section 21.13, 21.14 or 21.199, or Article 1.5 for a period of not to exceed 45 days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension in the manner provided herein.

(f) Compromise of Claims. The City Clerk, with the written approval of the City Attorney and subject to the provisions of the Charter, may compromise a claim for business, sales and use taxes where the portion of the claim proposed to be released is less than $5,000.00; and with the approval of the City Attorney and the City Council, may compromise such a claim where the portion proposed to be released amounts to $5,000.00 or more. (Amended by Ord. No. 152,158, Eff. 5/10/79.)

(g) Minor Errors in Payment. In the event a discrepancy exists between the amount of tax paid and the amount of tax due under this Article or Article 1.5, resulting in the underpayment or overpayment of the tax in an amount of

$3.00 or less, the City Clerk may accept and record such underpayment or overpayment without other notification to the taxpayer.

(h) Rules and Regulations-Appointment. The City Clerk may make such rules and regulations as are not inconsistent with the provisions of this Article or Article 1.5 as may be necessary or desirable to aid in the enforcement of the provisions of this Article and Article 1.5. When, by reason of the provisions of the Constitution of the United States or the Constitution of California, the business tax imposed by this Article cannot be enforced without there being an apportionment according to the amount of business done in the City of Los Angeles, or in the State of California, as the case may be, the City Clerk may make such rules and regulations for the apportionment of the tax as are necessary or desirable to overcome the constitutional objections. Such rules and regulations shall be approved by the City Attorney prior to becoming effective.

SEC.21.109 MOTION PICTURES AND CARTOONS.

(a) For the purpose of this section a motion picture producer is a person who engages in the business of producing motion pictures or photoplays, or making or producing motion pictures or photoplays in which cartoons are used instead of actors. Said business includes the development of a screen story, whether based on fact or fiction, the photographing of said story, whether by means of photographic film, magnetic tape, or other device, and the cutting, scoring, editing, and final preparation of the picture for release, and when performed by a person engaged in the foregoing activities described in this subsection also includes either or both of the following:

1. The lending by a motion picture producer of the services of employees for which the producer has contracted to one or more other motion picture producers; and

HM12. The furnishing of motion picture studio facilities to other motion picture producers to produce motion pictures where the facilities include, in addition to physical equipment, the services of technicians such as cameramen, soundmen, carpenters, electricians and set decorators.

Every person engaged in the business of being a motion picture producer shall pay a tax in the amount provided in subsection (c). The measure of the tax in each instance shall be the total of the following sums: the gross cost of production of motion pictures and photoplays produced by the motion picture producer, the gross receipts received by the motion picture producer in return for the lending of the services of his employees as described herein, and the gross receipts received by the motion picture producer in return for the furnishing of motion picture studio facilities in the manner described herein.

(b)Every person engaged in the business of reconstructing motion pictures by synchronizing pictures with sound, or making or producing sound scores, other than a sound score made or produced by a motion picture producer in the preparation for release of a motion picture produced by him, shall pay a tax measured by the gross cost of the work done in the amount provided in subsection(c).

(c) (Amended by Ord. No. 159,384, Eff. 11/8/84.) The taxes charged for the privilege of engaging in the businesses described in this section are as follows:

Where the measure of the tax is less than $50,000.00, the tax shall be $125.00 per year;

Where the measure of the tax is $50,000.00 or more, and less than $100,000.00 the tax shall be $250.00 per year;

Where the measure of the tax is $100,000.00 or more, and less than $200,000.00, the tax shall be $500.00 per year.

Where the measure of the tax is $200.000.00, or more, and less than $300,000.00, the tax shall be $750.00 per year;

Where the measure of tax is $300,000.00 or more, and less than $400,000.00, the tax shall be $1,000.00 per year;

Where the measure of the tax is $400,000.00 or more, and less than $500,000.00, the tax shall be $1,250.00 per year;

Where the measure of tax is $500,000.00 or more, and less than $600,000.00, the tax shall be $1,500.00 per year;

Where the measure of tax is $600,000.00 or more, and less than $700,000.00, the tax shall be $1,750.00 per year;

Where the measure of the tax is $700,000.00 or more, and less than $800,000.00, the tax shall be $2,000.00 per year;

Where the measure of the tax is $800,000.00 or more, and less than $900,000.00, the tax shall be $2,250.00 per year;

Where the measure of the tax is $900,000.00 or more, and less than $1,000,000.00, the tax shall be $2,500.00 per year;

Where the measure of the tax is $1,000,000.00 or more, and less than $1,100,000.00, the tax shall be $2,750.00 per year;

Where the measure of the tax is $1,100,000.00 or more, and less than $1,200,000.00 the tax shall be $3,000.00 per year;

Where the measure of the tax is $1,200,000.00 or more, and less than $1,300,000.00, the tax shall be $3,250.00 per year;

Where the measure of the tax is $1,300,000.00 or more, and less than $1,400,000.00, the tax shall be $3,500.00 per year;

Where the measure of the tax is $1,400,000.00 or more, and less than $1,500,000.00, the tax shall be $3,750.00 per year;

Where the measure of the tax is $1,500,000.00 or more, and less than $1,600,000.00, the tax shall be $4,000.00 per year;

Where the measure of the tax is $1,600,000.00 or more, and less than $1,700,000.00, the tax shall be $4,250.00 per year;

Where the measure of the tax is $1,700,000.00 or more, and less than $1,800,000.00, the tax shall be $4,500.00 per year;

Where the measure of the tax is $1,800,000.00 or more, and less than $1,900,000.00, the tax shall be $4,750.00 per year;

Where the measure of the tax is $1,900,000.00 or more, and less than $2,000,000.00, the tax shall be $5,000.00 per year;

Where the measure of the tax is $2,000,000.00 or more, and less than $2,100,000.00, the tax shall be $5,250.00 per year;

Where the measure of the tax is $2,100,000.00 or more, and less than $2,200,000.00, the tax shall be $5,500.00 per year;

Where the measure of the tax is $2,200,000.00 or more, and less than $2,300,000.00, the tax shall be $5,750.00 per year;

Where the measure of the tax is $2,300,000.00 or more, and less than $2,400,000.00, the tax shall be $6,000.00 per year;

Where the measure of the tax is $2,400,000.00 or more, and less than $2,500,000.00, the tax shall be $6,250.00 per year;

Where the measure of the tax is $2,500,000.00 or more, and less than $2,600,000.00, the tax shall be $6,500.00 per year;

Where the measure of the tax is $2,600,000.00 or more, and less than $2,700,00.00, the tax shall be $6,750.00 per year;

Where the measure of the tax is $2,700,000.00 or more, and less than $2,800,000.00, the tax shall be $7,000.00 per year;

Where the measure of the tax is $2,800,000.00 or more, and less than $2,900,000.00, the tax shall be $7,250.00 per year;

Where the measure of the tax is $2,900,000.00 or more, and less than $3,000,000.00, the tax shall be $7,500.00 per year;

Where the measure of the tax is $3,000,000.00 or more, and less than $3,100,000.00, the tax shall be $7,750.00 per year;

Where the measure of the tax is $3,100,000.00 or more, and less than $3,200,000.00, the tax shall be $8,000.00 per year;

Where the measure of the tax is $3,200,000.00 or more, and less than $3,300,000.00, the tax shall be $8,250.00 per year;

Where the measure of the tax is $3,300,000.00 or more, and less than $3,400,000.00, the tax shall be $8,500.00 per year;

Where the measure of the tax is $3,400,000.00 or more; and less than $3,500,000.00, the tax shall be $8,750.00 per year;

Where the measure of the tax is $3,500,000.00 or more; and less than $3,600,000.00, the tax shall be $9,000.00 per year;

Where the measure of the tax is $3,600,000.00 or more, and less than $3,700,000.00, the tax shall be $9,250.00 per year;

Where the measure of the tax is $3,700,000.00 or more, and less than $3,800,000.00, the tax shall be $9,500.00 per year;

Where the measure of the tax is $3,800,000.00 or more, and less than $3,900,000.00, the tax shall be $9,750.00 per year;

Where the measure of the tax is $3,900,000.00 or more, and less than $4,000,000.00, the tax shall be $10,000.00 per year;

Where the measure of the tax is $4,000,000.00 or more, and less than $4,100,000.00, the tax shall be $10,250.00 per year;

Where the measure of the tax is $4,100,000.00 or more, and less than $4,200,000.00, the tax shall be $10,500.00 per year;

Where the measure of the tax is $4,200,000.00 or more, the tax shall be $10,750.00 per year.

SEC.21.147. THEATER:

For every person engaged in the business of conducting a theatre containing a permanent stage upon which movable scenery and theatrical appliances are used, where regular theatrical or vaudeville performances are given and for the privilege of viewing which a fee is charged, collected or received, or conducting, managing or carrying on a moving picture theatre or drive-in theatre, where moving pictures are exhibited and a fee is charged, collected or received, or conducting, operating or promoting any entertainment, show or exhibition not otherwise required to pay a tax therefor under other provisions of this Article, where an admission fee is charged, collected or received, or where no admission fee is charged, collected

or received but donations of any kind or character are solicited or accepted, the tax shall be $18.75 per year or fractional part thereof for the first $15,000.00 or less of gross receipts, plus $1.25 per year for each additional $1,000.00 of gross receipts or fractional part thereof in excess of $15,000.00; provided that in connection with any entertainment, show or exhibition if no admission fee is charged, collected or received, and no donations of any kind or character are solicited or accepted, or if the person conducting, operating or presenting the entertainment, show or exhibition taxed under this section is a person mentioned in subdividion 4 subsection (c) of Section 21.190 of this Code, or if the person is a strolling musician who performs on sidewalks, in parks and similar publicly owned places where no admission fee is charged, collected or received, even though donations are solicited and collected, no tax shall be required to be paid therefor by such person. (Amended by Ord. No. 159,384, Eff. 11/8/84.)

SEC.21.166. MERCHANDISE WHOLESALE SELLING:

(a) For every person manufacturing and selling any goods, wares or merchandise at wholesale, or selling any goods, wares or merchandise at wholesale, and not otherwise specifically taxed by other provisions of this Article, the tax shall be $20.00 per year or fractional part thereof for the first $20,000.00 or less of gross receipts, plus $1.00 per year for each additional $1,000.00 of gross receipts or fractional part thereof in excess of $20,000.00; provided that blind persons need not include the first $20,000.00 of gross receipts in the computation of the amount of tax due hereunder, nor be required to pay the minimum tax of $20.00. This exemption shall not subject such blind person to the provisions of Section 21.190 of this Code. (Amended by Ord. No. 140,833, Operative 1/1/71.)

(b) For the purpose of this section, a wholesale sale or sale at wholesale means a sale of goods, wares or merchandise for the purpose of resale in the regular course of business.

(c) Whenever a person engages at the same location in two or more business of the kind taxed in this section, a joint Registration Certificate shall be issued for all such businesses and the tax shall be measured by the sum of the gross receipts of all such businesses so conducted.

(d) A blind person, within the meaning of this section, shall mean a person having not more than ten percent visual acuity in the better eye, with correction. Such blindness shall be certified by a licensed physician and surgeon who specializes in diseases of the eye, or by the Bureau of Vocational Rehabilitation of the Department of Education of the State of California, and the exemption provided by this section shall not apply until a certificate as to such blindness shall be furnished to the City Clerk.

(e) No tax hereunder shall be required to be paid by any nonprofit wholly retailer owned food cooperative by reason of its sales to its owner-members. (Added by Ord. No. 144,090, Eff. 12/16/72.)

(f) For the purpose of this section, newspapers, magazines, periodicals, books and other printed matter shall be deemed to be included in the term "goods, wares or merchandise"; publishing or publishing and printing shall be deemed to be included in the term "manufacturing"; and the term "gross receipts" shall mean California receipts from the selling or furnishing of advertising or advertising space in printed matter in addition to California receipts from the sale of goods, wares and merchandise. The provisions of this subsection shall apply only to business tax periods commencing on or after January 1, 1984. (Added by Ord. No. 158,484, Eff. 12/29/83.)

SEC.21.167. MERCHANDISE-RETAIL SELLING:

(a) For every person manufacturing and selling any goods, wares or merchandise at retail or selling any goods, wares or merchandise at retail, and not otherwise specifically taxed by other provisions of this Article, the tax shall be $18.75 per year or fractional part thereof for the

first $15,000.00 or less of gross receipts, plus $1.25 per year for each additional $1,000.00 of gross receipts or fractional part thereof in excess of $15,000.00; provided that blind persons need not include the first $15,000.00 of gross receipts in the computation of the amount of tax due hereunder nor be required to pay the minimum tax of $18.75. This exemption shall not subject such blind person to the provisions of Section 21.190 of this Code. (Amended by Ord. No. 140,833, Operative 1/1/71.)

(b) For the purpose of this section, a retail sale or sale at retail means a sale of goods, wares or merchandise for any purpose other than resale in the regular course of business.

(c) Whenever a person engages at the same location in two or more businesses of the kind taxed in this section, a joint Registration Certificate shall be issued for all such businesses and the tax shall be measured by the sum of the gross receipts of all such businesses so conducted.

(d) A blind person, within the meaning of this section shall mean a person having not more than ten percent visual acuity in the better eye, with correction. Such blindness shall be certified by a licensed physician and surgeon who specializes in diseases of the eye, or by the Bureau of Vocational Rehabilitation of the Department of Education of the State of California, and the exemption provided by this section shall not apply until a certificate as to such blindness shall be furnished to the City Clerk.

(e) For the purpose of this section, newspapers, magazines, periodicals, books and other printed matter shall be deemed to be included in the term "goods, wares or merchandise"; publishing or publishing and printing shall be deemed to be included in the term "manufacturing"; and the term "gross receipts" shall mean California receipts from the selling or furnishing of advertising or advertising space in printed matter in addition to California receipts from the sale of goods, wares or merchandise. The pro-

visions of this subsection shall apply only to business tax periods commencing on or after January 1, 1984. (Added by Ord. No. 158,484, Eff. 12/29/83.)

(f) EXEMPTION FOR VENDORS AT A SWAP MEET: The provisions of this Section shall not apply to a vendor who sells, exchanges, displays or offers for sale or exchange new or secondhand goods at a swap meet, as defined in Section 103.311 of this Code. This exemption applies only to that portion of a vendor's receipts derived from sales or exchanges at a swap meet. (Added by Ord. No. 158,621, Eff. 2/20/84.)

SEC.21.189.2. RADIO AND TELEVISION BROADCASTER. (Added by Ord. No. 158,484, Eff. 12/29/83).

(a) For every person engaged in business as a radio broadcaster or television broadcaster the tax shall be $18.75 per year or fractional part thereof for the first $15,000.00 or less of gross receipts, plus $1.25 per year for each additional $1,000.00 of gross receipts or fractional part thereof in excess of $15,000.00.

(b) For the purpose of this section, the following terms shall be defined as follows:

1. "Radio Broadcaster" shall mean any person engaging in the business of producing and broadcasting or broadcasting local or network radio programs or advertising material, including but not limited to the furnishing of services, program elements or facilities in connection with such production and broadcasting or broadcasting.

2. "Television Broadcaster" shall mean any person engaging in the business of producing and broadcasting or broadcasting local or network television programs or advertising material, including but not limited to the furnishing of services, program elements or facilities in connection with such production and broadcasting or broadcasting. A "television broadcaster" shall include any

person operating a television system where the viewing audience pays a fee to view the broadcast.

(c) When gross receipts are constitutionally required to be apportioned and are derived from or attributable to activities engaged in within and without the City, gross receipts shall be apportioned in a manner that is fairly calculated to determine the amount of gross receipts derived from or attributable to engaging in business in the City. Such apportionment shall be made on the basis of payroll, values and situs of tangible property, general expense, or by reference to any of these or other factors, or by any other method of apportionment as will fairly determine the amount of gross receipts derived from or attributable to engaging in business in the City. Gross receipts derived from or attributable to sources within the City shall include gross receipts from any activities carried on in this City.

(d) Notwithstanding the foregoing, the gross receipts used in the measurement of the tax under this section shall be limited to receipts which are generated, produced, or attributable to local activities, in the State of California.

(e) The provisions of this section shall apply only to business tax periods commencing on or after January 1, 1984.

SEC.21.190. INDEPENDENT CONTRACTORS:

(a) For every person engaged in any trade, calling, occupation, vocation, profession or other means of livelihood, as an independent contractor and not as an employee of another, and not specifically taxed by other provisions of this Article, the tax shall be $30.00 per year or fractional part thereof for the first $6,000.00 or less of gross receipts, plus $5.00 per year for each additional $1,000.00 of gross receipts or fractional part thereof in excess of $6,000.00. (Amended by Ord. 140,706, Eff. 9/11/70, Operative 1/1/71.)

(b) A person engaged in more than one trade, calling, occupation, vocation, profession or other means of livelihood embraced within this section shall consolidate all gross receipts and shall be issued one registration certificate covering all such activities. Any person engaged in any activities embraced within this section, in addition to activities covered by any other section of this Article, shall obtain separate registration certificates for the activities covered by such other sections.

(c) As used in this section, the term "gross receipts" does not include:

1. Receipts from a trade, calling, occupation, vocation, profession or other means of livelihood, which this city is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution or laws of the State of California;

2. Receipts of community chests, funds, foundations or corporations organized and operated for religious, hospital or charitable purposes, not conducted for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

3. Receipts of non-profit educational institutions of collegiate grade, defined herein to mean institutions incorporated as colleges or seminaries under the laws of the State of California, which require for regular admission the completion of a four-year high school course, or its equivalent, and which confer upon their graduates at least one academic or professional degree, based on a course of at least four years in liberal arts and sciences, or on a course of at least three years in professional studies such as law, theology, education, medicine, pharmacy, architecture, fine arts, commerce, or journalism; receipts of non-

profit secondary schools which are duly accredited by the University of California; and receipts of non-profit elementary schools in which instruction is given to students in the pre-primary and primary grades in the several branches of studies required to be taught in the public schools of the State of California;

4. Receipts of Rotary, Kiwanis and Lions Clubs, non-profit automobile clubs, Chambers of Commerce, and other community service organizations; also receipts of trade associations such as Merchants Plumbers Association, Merchants and Manufacturers Association and labor organizations;

5. Receipts of (a) railroad companies including street railways, herein defined to include interurban electric railway, (b) sleeping car, dining car, drawing-room car, and palace car companies, refrigerator, oil, stock, fruit and other car-loaning and other car companies operating upon railroads in this city, (c) companies doing express business on any railroad, steamboat, vessel or stage in this city, (d) telegraph and telephone companies, (3) companies engaged in the transmission or sale of gas electricity;

6. (Amended by Ord. No. 149,503, Eff. 5/26/77.) Receipts of persons acting as agents or brokers for other persons to be paid over to such other persons, or to pay for such other persons' legal obligations, or as reimbursements for sums advanced by the agent for such other persons' legal obligations, or to be invested on behalf of such other persons. Notwithstanding the foregoing, however, the term "gross receipts" includes but is not limited to:

(i) receipts of any person received as commissions or fees earned, or charges of any character made of compensation of any character received, for the performance of any service by said person or any of said person's employees:

(ii) Receipts of any person received as partial or full compensation or reimbursement for salaries, payroll taxes, fringe benefits and any and all similar expenses for persons who are employees of said person under the criteria set forth in Division 4, Part 1, Chapter 2, Article 2 of the Labor Code of the State of California as effective on July 1, 1976. (Amended by Ord. No. 149,975, Eff. 9/12/77.)

(iii) receipts of any person received as partial or full compensation or reimbursement for equipment, supplies, utilities, or other items or services acquired by said person in that person's name and used or consumed in the performance of services subject to tax under this Section.

Provided, further, that any agent or broker dealing in stocks or other similar written instruments evidencing the right to participate in the assets of any business, or dealing in bonds or other evidences of indebtedness, who also deals in such property as a principal, shall include the gross receipts by which the tax is measured the amount of his trading profits resulting from such dealings. No deduction from receipts attributable to trading as a principal shall be made unless such deduction is provided for under subsection (a) of Section 21.00 this Article.

7. Receipts from the publication and sale of newspapers, magazines and other periodicals regularly issued at average intervals not exceeding three months. The exclusion contained in this subdivision shall not apply only to business tax periods commencing on or after January 1, 1984. (Amended by Ord. No. 158,484 Eff. 12/29/83.)

8. Receipts derived by a radio or television studio, station or network business from the production or broadcasting of local or network radio or television programs or advertising materials, including but not limited to the furnishing of services, program elements or facilities in connection with such production or broadcasting; provided. However, that nothing in this subdivision shall exempt any person from the tax imposed under Section 21.109 or exclude from the measure of the tax any receipts derived by any person from the operation of a television system where the viewing audience pays a fee to view the broadcast; provided, further, that nothing in this subdivision shall be construed as entitling any studio, station or network business to engage in a business subject to tax under Sections 21.166, 21.167 or 21.192 without paying the tax required thereunder. The exclusion contained in this subdivision shall not apply only to business tax periods commencing on or after January 1, 1984. (Amended by Ord. No. 158,484, Eff. 12/29/83.)

(c) 89. Receipts of a person acting as a real estate salesman as that term is defined in Section 10132 of the California Business and Professions Code. (Added by Ord. No. 152,091, Eff. 4/23/79.)

(d) When the gross receipts are derived from or attributable to activities engaged in within and without the City, gross receipts shall be allocated

in such a manner as is fairly calculated to determine the amount of gross receipts derived from or attributable to engaging in business in the City. Such allocation shall be made on the basis of payroll, value and situs of tangible property, general expense, or by reference to any of these or other factors, or by such other method of allocation as will fairly determine the amount of gross receipts derived from or attributable to engaging in business in the City. Gross receipts derived from isolated or occasional transactions at places outside the City but within the State of California, where the registrant is not regularly engaged in a course of business transactions shall be deemed to be gross receipts derived from engaging in business in the City. Gross receipts derived from or attributable to sources within this city include (a) gross receipts from tangible or intangible property located or having situs in this city and (b), when not contrary to law, gross receipts from any activities carried on in this city regardless of whether carried on in interstate, intrastate or foreign commerce.

Allocation formulae designed to carry into effect the purpose of this subsection shall be adopted by the City Clerk by rules and regulations. The City Clerk is hereby authorized, in the application to individual cases of such rules and regulations and the formulae therein contained, to make such modifications in formulae as may be necessary to carry out the intent of this subsection.

If the City Clerk reallocates gross receipts upon his examination of any return, he shall, upon the written request of the registrant, disclose to him the basis upon with the reallocation has been made.

SEC.21.192. PERSONAL PROPERTY RENTAL: (Amended by Ord. No. 140,833, Eff. 9/29/70, Operative 1/1/71.)

For every person engaged in the business of leasing or renting any tangible personal property, and not specifically taxed by other provisions of this Article, the tax shall be $30.00 per year or fractional part thereof for the first $12,000.00 or less of gross receipts, plus $2.50 per year for each additional $1,000.00 of gross receipts or fractional part thereof in excess of $12,000.00.

For the purpose of this section, "Tangible Personal Property" shall mean personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.

SEC.21.197. TELEPHONE COMPANIES: (Added by Ord. No. 127,688, Eff. 7/20/64.)

(a) For every person engaged in the business of providing telephone services, the tax shall be $20.00 per year or fractional part thereof for the first $20,000.00 or less of gross receipts, plus $1.00 per year for each additional 1,000.00 of gross receipts or fractional part thereof in excess of $20,000.00. (Amended by Ord. No. 140,833, Operative 1/1/71.)

(b) For the purpose of this Section, "gross receipts" shall have the same meaning as in subsection (a) of Section 21.00, except that only those receipts derived from providing telephone services within the City of Los Angeles shall be included, and further excepting that only receipts resulting from intra-state telephone services shall be included. "Gross receipts" shall also include receipts from the selling of advertising or advertising space in any directory, other printed matter or any other media only for business tax purposes commencing on or after January 1, 1984. (Amended by Ord. No. 158,484, Eff. 12/29/83.)

(c) For the purpose of this section, a "person engaged in the business of providing telephone services" shall mean a "telephone company" as the term is used in Article XIII, Section 14 of the Constitution of California.